IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGMENT NO.100 OF 2004
IN
SUMMARY SUIT NO.4082 OF 2003

Ramnik Pasu Gala ..Plaintiff.

Vs.

M/s.Pate Corporation
& Ors. ..Defendants.

Mr.Birendra Saraf i/b.Manoj & Ashok Associates, Advocate for the Plaintiff.

Mr.N.N.Vaishnawa, Advocate for Defendant No.3.

CORAM: S.J.VAZIFDAR, J.
DATED: 20TH JANUARY, 2005

P.C. :

The suit is filed on a demand promissory note executed by the Defendants for a sum of Rs.40,00,000/- repayable with interest at 12% per annum. Defendant Nos.2 and 3 are the partners of Defendant No.1. The Plaintiff has made the claim in the suit after giving credit for the value of goods received by the Plaintiff from the Defendants.

2. As the Defendants failed to repay the said amount despite a request to do so, the Plaintiff filed a police complaint on 15.10.2002. By a letter dated 21.11.2002 the Plaintiff again requested

repayment of the said amount with interest. There is no reply to this letter. The Plaintiff filed another police complaint in August, 2003. As the Defendants failed to repay the said amount, the Plaintiff was constrained to file this suit.

3. Before referring to the defence to this Summons for Judgment, it is important to note that at no stage prior to the filing of the suit did Defendant No.3 contend that he was not liable on the promissory note for any reason whatsoever. In fact, on 14.1.2004 the Defendants signed a vakalatnama in favour of their Advocate who now appears only for Defendant Nos.1 and 2. What is even more important to note is the fact that a letter dated 22.9.2003 was addressed by the Defendant's Advocate expressly stating that it was on behalf of each of the three Defendants.

4. It was only on 17.3.2004 that the present Advocate filed his vakalatnama on behalf of Defendant No.3. Considering the facts and circumstances of the case, it is obvious that this was done to to distance himself from Defendant Nos.1 and 2 to enable Defendant No.3 to take up a false defence which hitherto was never urged.

5. Defendant No.3 in his affidavit in reply had alleged that his brother was in the habit of forging his signature either through himself or through somebody else. It is pertinent to note that Defendant No.3 did not allege that he never gave instructions to the earlier Advocate to address the said letter dated 22.9.2003. Nor is there any explanation why this stand was not mentioned in the said letter dated 22.9.2003. The present stand is therefore ex-facie false.

6. It was contended by Mr.Vaishnawa, the learned counsel appearing on behalf of the Defendants that the suit is barred under the provisions of the Bombay Money Lenders Act.

7. Apart from a bare averment to this effect no facts have been stated in support thereof. Whether a party is a money lender and a transaction sued on by him his hit by the provisions of the Bombay Money Lenders Act, is a question of fact. In the present case it is no doubt true that the Plaintiff has stated in the plaint that the said sum of Rs.40,00,000/- was advanced from time to time as a friendly loan for the purpose of the Defendant’s

business. There is nothing on record to suggest that lending money is or every constituted the business of the Plaintiff. Merely because the Plaintiff lent money to the Defendants a few times, it cannot be inferred that the Plaintiff is engaged in the business of money lending. This point is covered by a judgment of a learned Single Judge of this Court in the case of *Nandram Kaniram & Ors. v. N.B. Rahatekar, (1994) Maharashtra Law Journal, 380* where it was held as under:

> "7. This takes me to the last point over which there was considerable debate before me. Now, whether or not, an individual is carrying on business of money-lending is essentially a question of fact. The final Court of fact has recorded a finding of fact in favour of the plaintiff. I see no reason to interfere with the same in second appeal. Here is a professional carrying on profession in a city like Pune. He must have had savings from the professional income. It would be natural for him to invest the same in a manner by which he can derive maximum return. If he has chosen to advance his savings on interest to reputed and known traders through a Hundi Dalal on few occasions, it cannot be said that he was a professional money-lender. Money-lending business always imports a notion of system, repetition and continuity. These elements have been held to be absent in the instant case and I see no perversity in reaching that

> conclusion. Neither law, nor equity is in favour of the defendant who is trying to delay and defeat the just claim and avoiding his solemn liability to honour his commitment. The last point is also therefore without any substance."

8. In the circumstances, there is no defence to the suit. The Summons for Judgment is therefore made absolute with costs. Interest however after the date of the suit shall be at 12% per annum.

Refund of Court fees as per rules.

Parties to act on an ordinary copy of this order duly authenticated by the Associate/Court Stenographer.